

1 RENE L. VALLADARES
2 Federal Public Defender
3 Nevada State Bar No. 11479
4 PAUL D. RIDDLE
5 Assistant Federal Public Defender
6 411 E. Bonneville, Ste. 250
7 Las Vegas, Nevada 89101
(702) 388-6577/Phone
(702) 388-6261/Fax
Paul_Riddle@fd.org

8 Attorney for Vonteak Alexander

9
10 **UNITED STATES DISTRICT COURT**
11
12 **DISTRICT OF NEVADA**

13
14 UNITED STATES OF AMERICA,

15 Case No. 2:17-cr-00072-RFB-1

16 Plaintiff,

17
18 **DEFENDANT'S MOTION**
19 **ON RESTITUTION**

20 v.

21 VONTEAK ALEXANDER,

22 Defendant.

23
24 Vonteak Alexander asks the Court to reject the restitution calculations
25 submitted by Jane Doe's attorney on the grounds that the provisions of 18 U.S.C.
26 § 1593 do not apply. Mr. Alexander further asks the Court deny the imposition of
statutory restitution under 18 U.S.C. § 3014(a) on the grounds that he is
indigent.

27
28 **Procedural Background**

29
30 On May 15, 2019, Vonteak Alexander pleaded guilty to Interstate Travel in
31 Aid of Unlawful Activity in violation of 18 U.S.C. 1952(a)(3)(A). Pursuant to the

1 plea agreement, Mr. Alexander agreed to pay mandatory restitution. ECF No.
2 226. The court accepted his guilty plea and sentenced him to 96 months on May
3 4, 2021. ECF No. 300.

4
5 In the Plea Agreement, Mr. Alexander “acknowledge[d] that the conduct to
6 which he is entering a plea gives rise to mandatory restitution to the victims,”
7 and cites to 18 U.S.C. § 2259(a). ECF No. 226 at 8. The Plea Agreement also
8 provides that “if [the] offense conduct occurred after May 29, 2015, and unless the
9 Sentencing Court finds the Defendant to be indigent, an additional mandatory
10 special assessment of \$5,000.00 per count must be imposed” under 18 U.S.C. §
11 3014.

12
13 Jane Doe filed a motion seeking \$15,000 in restitution. The calculation was
14 based on the definition of a victim’s loss under 18 U.S.C. § 1593(b)(3). Jane Doe
15 argued, “Defendant forced Jane Doe to work for him for approximately 20 days
16 during which she earned an average of approximately \$500 to \$1000 per day.”
17 ECF No. 2727 at 9. “She was forced to work for him approximately 13 hours per
18 day on average during that period.” *Id.* Alternatively, Jane Doe calculated
19 restitution under the minimum wage and overtime compensation under the
20 FLSA, including liquidated damages. This too was based on the statutory
21 provisions of 18 U.S.C. § 1593. The amount of loss calculated was \$4,632.75. *Id.*

22
23 At sentencing, the Court ordered restitution in the amount of \$20,000,
24 \$15,000 of which was to be paid to Jane Doe, and statutory restitution of \$5,000

1 under 18 U.S.C. § 3014(a). Mr. Alexander made an oral motion objecting to the
2 imposition of restitution in that amount. The Court ordered the parties to meet
3 and confer on the issue of restitution and report if a joint resolution could be
4 reached by May 19, 2020. The parties did meet but were unable to reach a
5 resolution. This briefing follows.

7 **Legal Background**

8 The Fifth Amendment Due Process Clause applies to sentencing
9 proceedings. *Townsend v. Burke*, 334 U.S. 736, 741 (1948). Because restitution
10 hearings are part of the sentencing process, *United States v. Richard*, 738 F.2d
11 1120, 1122 (10th Cir. 1984), the Due Process Clause applies to restitution
12 hearings. In determining the context of defendant's constitutional protections in
13 this restitution hearing, "we consider the private and government interests at
14 state, the risk of an erroneous deprivation of the private interests through
15 existing procedures and the probable value of additional or substitute
16 procedures." *United States v. Keith*, 754 F.2d 1388, 1392 (9th Cir. 1985).

20 Due process rights at sentencing are limited. Due process ensures that a
21 defendant will not be sentenced on the basis of "misinformation of a
22 constitutional magnitude." *United States v. Tucker*, 404 U.S. 443, 447 (1972);
23 *accord Townsend*, 334 U.S. at 741 (sentencing of defendant on the basis of
24 "materially false" information "which the prisoner had no opportunity to correct
25 by services which counsel would provide violates due process."). A defendant has

1 a due process right “to be sentenced only on information that is accurate.” *Id.*
2 Some courts have held that a defendant does not have Confrontation Clause
3 rights at a sentencing or restitution hearing. *See United States v. Sunrhodes*, 831
4 F.2d 1537, 1543 (10th Cir. 1987); *United States v. Loreng*, 956 F. Supp. 2d 213
5 (D.C. Cir. 2013). And at least one restitution statute provides that a victim
6 cannot be compelled to testify at a restitution proceeding. 18 U.S.C. § 3664(g)(1).

7

8 **1. Section 1593 does not apply to Mr. Alexander’s restitution
9 calculation.**

10 Title 18, United States Code, Section 2259 provides for mandatory
11 restitution to the victims of crimes. *See also* 18 U.S.C. § 3663A(c)(1)(B). The
12 statute incorporates by reference the procedures for issuance and enforcement of
13 an order of restitution as set forth in 18 U.S.C. § 3664. The statute further
14 provides that the Court should order restitution to each victim in the full amount
15 of each victim’s losses as determined by the court and without consideration of
16 the economic circumstances of the defendant. 18 U.S.C. § 3664(f)(1)(A). Section
17 2259(c)(2) defines the “full amount of the victim’s losses” to include “any cost
18 incurred or that are reasonably projected to be incurred in the future, by the
19 victim, as a proximate result of the offenses involving the victim.”

20 Restitution under 18 U.S.C. § 1593, which is the basis for Jane Doe’s
21 calculations, is never referenced in the Plea Agreement. Instead, the parties
22 expressly refer to 18 U.S.C. § 2559. Section 1593 employs a unique restitution
23 calculation that differs significantly from Sections 2259 and 3663. Moreover,

1 restitution under this provision is expressly limited to offenses under Chapter 77
2 of Title 18. 18 U.S.C. § 1593(a) (“the court shall order restitution for any offense
3 under this chapter.”).
4

5 Thus, not only does the statute not arguably apply under its own plain
6 language reading, Mr. Alexander was never put on notice of the potential
7 restitution calculation based on Section 1593’s unique loss provisions. For these
8 reasons, the Court should reject Jane Doe’s proposed restitution calculations of
9 \$15,000 or the proposed alternative, \$4,632.75, in favor of a restitution
10 calculation consistent with 18 U.S.C. §§ 2559(c)(2) or 3663A((b)(2).
11

12 **2. The Court should not impose \$5,000 in statutory restitution
13 under Section 3014(a) because of Mr. Alexander’s current and
14 anticipated financial condition at release.**

15 A defendant has the burden of proving he is unable to pay a fine. *United*
16 *States v. Strange*, 692 Fed. Appx. 346, 349 (9th Cir. 2017); *United States v.*
17 *Brickey*, 289 F.3d 1144, 1152 (9th Cir. 2002). However, the court may impose a
18 fine on a currently indigent defendant, if it finds that he has earning capacity to
19 pay the fine in the future. *United States v. Orlando*, 553 F.3d 1235, 1240 (9th Cir.
20 2009).
21

22 Mr. Alexander has some earning potential, but significant family
23 obligations. Mr. Alexander completed his high school education. PSR ¶ 92. While
24 on pretrial release, Mr. Alexander worked several jobs – often at once – in order
25

1 to make money. While he certainly made some bad decisions while on release, his
2 work ethic and willingness to strive for a better life cannot be challenged.
3

4 When released, Mr. Alexander will face significant financial obstacles. Mr.
5 Alexander was in custody from 2006 through 2015 and has limited financial
6 resources as a result. PSR ¶ 99. He provides financial support to his three
7 children with Jessica Campos. PSR ¶ 70. While on pretrial release, Mr.
8 Alexander married Rose Marie. PSR ¶ 76. Rose reports that she has several
9 children of her own that he will be supporting as well when released.
10

11 For these reasons, Mr. Alexander asks the Court find him indigent within
12 the meaning of 18 U.S.C. § 3014(a) and decline to apply the statutory restitution.
13

14 **Conclusion**

15 For the foregoing reasons, Mr. Alexander respectfully requests the Court
16 decline to impose the requested restitution in this case.
17

18 DATED this 4th day of August, 2021.

19 Respectfully submitted,
20 RENE L. VALLADARES
Federal Public Defender

21 By: /s/Paul D. Riddle
22 PAUL D. RIDDLE
23 Assistant Federal Public Defender
Attorney for Vonteak Alexander
24
25
26

CERTIFICATE OF ELECTRONIC SERVICE

The undersigned hereby certifies that he is an employee of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on August 4, 2021, he served an electronic copy of the above and foregoing **MOTION FOR RESTITUTION** by electronic service (ECF) to the person named below:

CHRISTOPHER CHIOU
Acting United States Attorney
CHRISTOPHER BURTON
Assistant United States Attorney
501 Las Vegas Blvd. South
Suite 1100
Las Vegas, NV 89101

/s/ Marcus Walker
Employee of the Federal Public
Defender